

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Monett Metals, Inc.
101 Industrial Drive
Monett, Missouri 65708

EPA ID No. MOD985774843

Respondent.

Proceeding under Section 3008(a) and (g) of
of the Resource Conservation and Recovery
Act as amended, 42 U.S.C. § 6928(a) and (g)

**COMPLAINT AND
CONSENT AGREEMENT/
FINAL ORDER**

Docket No. RCRA-07-2002-0116

**COMPLAINT AND
CONSENT AGREEMENT/FINAL ORDER**

This administrative action is being conducted pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, Title 40 C.F.R. Part 22 ("Consolidated Rules of Practice").

The Complainant is the Director of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA") Region 7, who has been duly delegated the authority to bring this action. The Respondent is Monett Metals, Inc., a company incorporated under the laws of and authorized to conduct business in the State of Missouri. The authority to execute the Complaint portion of this Complaint and Consent Agreement/Final Order is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated March 20, 1985. The Regional Administrator has delegated this authority to the Director of the Air, RCRA and Toxics Division of EPA, Region 7, by EPA Delegation No. R7-8-9-A, dated January 1, 1995.

Complainant and Respondent have agreed to a settlement of the following Factual Allegations, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b), 22.18(b)(2) and 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and 22.18(b)(3). This Complaint and Consent Agreement/Final Order is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this Complaint and Consent Agreement/Final Order.

The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations (C.S.R.), Chapter 25 (10 C.S.R. 25). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Based upon the facts alleged in this Complaint and Consent Agreement/Final Order and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in this Complaint and Consent Agreement/Final Order.

FACTUAL ALLEGATIONS

Jurisdiction, Statutory and Regulatory Requirements

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

2. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondent violated the regulations found at 40 C.F.R. Part 262.11.
3. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), provides that if EPA determines that any person has violated or is in violation of any requirement of Subchapter III, EPA may issue an order assessing a civil penalty for any past or current violation, require compliance, or both.
4. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$27,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 30, 1997. Pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), EPA must consider various factors in assessing a penalty, including the seriousness of the violations and any good faith efforts of Respondent to comply with the applicable requirements.
5. Respondent is a Missouri corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
6. Respondent, located at 101 Industrial Drive, Monett, Missouri 65708, produces steel castings at its facility and as a result of such operations produces baghouse particulate wastes.
7. Respondent began operations at this facility in 1994 and currently employs approximately 54 employees.
8. On or about January 15, 1992, Respondent submitted a Notification of Regulated Waste Activity to EPA for its facility. The Notification indicated that Respondent was operating as a generator of hazardous waste. Respondent was issued the EPA identification number MOD985774843.
9. On August 22-23, 2001, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on information obtained by EPA during the inspection, Respondent was operating at that time as a conditionally exempt small quantity generator of D006 characteristic hazardous waste.

VIOLATION

FAILURE TO CONDUCT A HAZARDOUS WASTE DETERMINATION **40 C.F.R. § 262.11**

10. Complainant hereby incorporates the allegations contained in paragraphs 1 through 9 above, as if fully set forth herein.

11. Pursuant to 40 C.F.R. § 262.11, as incorporated by reference at 10 C.S.R. 25-5.262(1), a generator of solid waste, as defined in 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

12. At the time of the August 22-23, 2001 EPA inspection, Respondent was generating approximately one 55-gallon drum of induction furnace baghouse dust waste every three months. This dust waste constitutes particulate matter that is emitted from the furnaces as scrap metal is being melted.

13. At the time of the EPA inspection, Respondent had been commingling its furnace baghouse dust waste with shot blast baghouse dust waste, casting tumbler baghouse dust waste, and sand baghouse dust waste. Respondent had been disposing of the combined baghouse wastes in a solid waste landfill.

14. At the time of the EPA inspection, Respondent had not conducted a hazardous waste determination on the furnace baghouse dust waste.

15. A representative sample of the furnace baghouse dust waste taken during the EPA inspection was tested using the Toxicity Characteristic Leaching Procedure. Test results indicated that the concentration of cadmium in the waste was greater than the regulatory limit found in Table 1 of 40 C.F.R. § 261.24.

16. Therefore, pursuant to 40 C.F.R. §§ 261.20(a) and 261.24(a), the furnace baghouse dust waste is a hazardous waste with an EPA Hazardous Waste number of D006.

17. Respondent's failure to make a hazardous waste determination is a violation of 10 C.S.R. 25-5.262(1), which incorporates by reference 40 C.F.R. § 262.11.

CONSENT AGREEMENT

18. Respondent and EPA agree to the terms of this Complaint and Consent Agreement/Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order. The terms of this Consent Agreement and the Final Order shall not be modified except by a subsequent written agreement between the parties.

19. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order set forth below.

20. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

21. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the Complaint and Consent Agreement/Final Order.

22. Respondent and Complainant agree to conciliate the matters set forth in this Complaint and Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their respective costs and attorney's fees.

23. This Complaint and Consent Agreement/Final Order addresses all civil administrative claims for the RCRA violation identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

24. Nothing contained in the Final Order portion of this Complaint and Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

25. Respondent agrees that, in settlement of the claims alleged in the Complaint and Consent Agreement/Final Order, Respondent shall pay a mitigated civil penalty of \$8,639 as set forth in Paragraph 1 of the Final Order.

26. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated time frames may, among other things, subject Respondent to civil penalties of up to \$27,500 per day of non-compliance.

27. This Complaint and Consent Agreement/Final Order shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

28. This Consent Agreement and the Final Order shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 12 of the Final Order, that all requirements hereunder have been satisfied.

29. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this Complaint and Consent Agreement/Final Order, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this Final Order, Respondent shall pay a mitigated civil penalty of \$8,639.00.
2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States" and remitted to:

Regional Hearing Clerk
U.S. EPA Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The Respondent shall reference the EPA Docket Number on the check. A copy of the check shall also be mailed to:

Mr. Alex Chen
Office of Regional Counsel
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum.
4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Complaint and Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

B. Compliance Actions

5. Beginning thirty (30) days of the effective date of this Final Order, Respondent must conduct a periodic toxicity analysis on the furnace baghouse dust waste stream, pursuant to the

requirements of 40 C.F.R. § 262.11 and 10 C.S.R. 25-5.262(1). Such analyses must be conducted every three months over the next two years. A copy of each analytical result must be submitted to:

Mr. Brian Mitchell
ARTD/RESP
U.S. EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

C. Parties Bound

6. This Final Order portion of this Complaint and Consent Agreement/Final Order shall apply to and be binding upon Complainant and Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Complaint and Consent Agreement/Final Order.

D. Reservation of Rights

7. Notwithstanding any other provision of this Complaint and Consent Agreement/Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Complaint and Consent Agreement/Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed twenty-seven thousand five hundred dollars (\$27,500) per day per violation pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

8. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this Complaint and Consent Agreement/Final Order.

9. Except as expressly provided herein, nothing in this Complaint and Consent Agreement/Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from Respondent's facility.

10. Notwithstanding any other provisions of the Complaint and Consent Agreement/Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

11. The headings in this Complaint and Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Complaint and Consent Agreement/Final Order.

12. The provisions of this Complaint and Consent Agreement/Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

4/17/02
Date

William A. Spratlin
William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region 7

4/16/02
Date

Alex Chen
Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:
MONETT METALS, INC.

4-15-02
Date

Signature 

Printed Name Steven D. Lamm

Title President

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date April 29, 2002

IN THE MATTER OF Monett Metals, Inc., Respondent
Docket No. RCRA-07-2002-0116

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Alexander Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Daniel Hinken
Monett Metals, Inc.
101 Industrial Drive
Monett, Missouri 65708

Dated: 4/29/02


Kathy Robinson
Regional Hearing Clerk